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Amendment No. 1 to HB1293

**Fowlkes
Signature of Sponsor**

AMEND Senate Bill No. 1344*

House Bill No. 1293

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 40-6-203, is amended by deleting the section in its entirety and substituting instead the following:

Section 40-6-203.

(a) Upon information made to any magistrate of the commission of a public offense, the magistrate shall examine, on oath, the affiant(s), reduce the examination to writing, and cause the examination to be signed by the person making it.

(b)

(1) The examination of the affiant(s) by the magistrate or lawfully authorized court clerk does not have to take place in a face-to-face meeting of the parties but may be conducted through the use of electronic audio-visual equipment which allows the affiant and the examining official to both view and hear each other simultaneously.

(2) Prior to the examination, an affiant shall prepare an affidavit of complaint in conformance with Rule 3 of the Tennessee Rules of Criminal Procedure and shall electronically transmit a facsimile copy of such affidavit to the examining official. After the receipt of a legible facsimile copy of the affidavit of complaint, the examining official shall proceed with the examination upon taking the oath of the affiant. Upon the determination by the examining official that the transmitted facsimile copy is a true copy of the affidavit of complaint of an affiant, such copy shall

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have the same legal effect as the original affidavit of complaint executed
by an affiant.

SECTION 2. Tennessee Code Annotated, Section 40-6-204, is amended by
deleting the section in its entirety and substituting instead the following:

Section 40-6-204.

The written examination shall set forth the facts stated by the affiant(s)
that establish that there is probable cause to believe an offense has been
committed and that the defendant committed it.

SECTION 3. Tennessee Code Annotated, Section 40-6-205, is amended by
deleting the section in its entirety and substituting instead the following:

Section 40-6-205.

If the magistrate is satisfied from the written examination that there is
probable cause to believe the offense complained of has been committed and
that there is probable cause to believe the defendant has committed it, then the
magistrate shall issue a warrant of arrest. The finding of probable cause shall be
based on evidence, which may be hearsay in whole or in part provided there is a
substantial basis for believing the source of the hearsay to be credible and for
believing that there is a factual basis for the information furnished. If the affiant is
not a law enforcement officer, as defined by §39-11-106(21), or no one of the
affiants in the case of multiple-affiants is a law enforcement officer, as defined by
§ 39-11-106(21), then a criminal summons as provided in §40-6-215 shall issue
instead of a warrant of arrest. Provided however in the case of multiple-affiants, if

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one or more of the affiants is a law enforcement as defined §39-11-106(21), then the magistrate may issue a warrant of arrest. A warrant may also issue if the affiant is not a law enforcement officer where there is an allegation of a violation of a pre-existing order of protection, which has been served on the defendant.

SECTION 4. Tennessee Code Annotated, Section 40-6-208, is amended by adding as subsection (d) as follows:

The warrant shall include a copy of the affidavit of complaint.

SECTION 5. Tennessee Code Annotated, Section 40-6-215, is amended by deleting the section in its entirety and substituting instead the following:

Section 40-6-215.

(a) As an alternative to a warrant of arrest as provided in §§ 40-6-201 - 40-6-214, the magistrate, judge or clerk may issue a criminal summons instead of a warrant of arrest except when an affiant is not a law enforcement officer as defined by Tennessee Code Annotated Section 39-11-106 (21), or no one of the affiants in the case of multiple-affiants is a law enforcement officer as defined by §39-11-106(21), in which instance the magistrate, judge or clerk shall issue a summons. A warrant may also issue if the affiant is not a law enforcement officer where there is an allegation of a violation of a pre-existing order of protection, which has been served on the defendant.

(b) The criminal summons shall be in substantially the same form as a warrant of arrest. The summons shall command that the defendant

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appear for booking and processing at the office of the sheriff or other law enforcement agency in the county responsible for booking procedures. A court date will be assigned following booking and processing procedures. It shall give notice to the person summoned that (1) that the defendant is being charged with a state criminal offense, (2) that the summons is being issued in lieu of an arrest warrant, (3) that the failure to appear for booking and processing or for court are separate criminal offenses regardless of the disposition of the charge for which the person is originally summoned, (4) that an arrest warrant will issue for failure to comply with the booking and court procedures or failure to appear for court, (5) that the failure to appear for booking and processing or failure to for court shall be punished as provided in Tennessee Code Annotated, Section 39-16-609, and (6) the defendant is encouraged to consult with an attorney about the summons.

(c) The summons shall be executed in triplicate and shall include a copy of the affidavit of complaint. When the summons is served, the original is to be returned to the court specified therein, one (1) copy, including the affidavit of complaint, given to the person summonsed, and one (1) copy to be sent to the sheriff or other law enforcement agency where the person being summoned is to appear for booking and processing.

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(d) The summons shall command that the defendant appear for booking and processing at the office of the sheriff or other law enforcement agency in the county responsible for booking procedures not more than ten (10) calendar days from the date of service of the summons. The summons shall clearly state the location of the booking location to which the defendant is to report including address and room number. The summons may set forth certain reasonable hours of the day or night when booking will not be allowed on a summons so as to accommodate the other booking duties of the sheriff or other law enforcement agency in the county responsible for booking procedures.

(e) When the defendant appears for booking and processing the defendant shall be subject to all procedures for booking as for an arrest warrant such as fingerprinting and photographing but the defendant shall not be unduly detained. In no event shall the defendant be locked in holding cells with persons detained on arrest warrants.

(f) Following the booking process the sheriff or other law enforcement agency in the county responsible for booking procedures, or the court clerk shall provide the defendant with notice of a court time and date the defendant is to next appear which shall be not less than ten (10) calendar days from booking nor more than forty-five (45) days from booking. The notice shall be explicit as the where and when the court is

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to occur and shall advise the defendant that he or she is encouraged to consult with an attorney about the summons.

(g) The summons shall have printed on it in conspicuous block letters the following:

NOTICE: YOU ARE CHARGED WITH A STATE CRIMINAL OFFENSE. THIS SUMMONS HAS BEEN ISSUED IN LIEU OF AN ARREST WARRANT. YOUR FAILURE TO APPEAR IN COURT ON THE DAY AND TIME ASSIGNED BY THIS SUMMONS OR THE FAILURE TO APPEAR FOR BOOKING AND PROSSESSING AS DIRECTED BY THIS SUMMONS WILL RESULT IN YOUR ARREST FOR SEPARATE CRIMINAL OFFENSES PUNISHABLE AS PROVIDED IN TENNESSEE CODE ANNOTATED, SECTION 39-16-609 REGARDLESS OF THE DISPOSITION OF THE CHARGE FOR WHICH YOU WERE ORIGINALLY SUMMONED. YOU ARE ENCOURAGED TO CONSULT WITH AN ATTORNEY ABOUT THIS SUMMONS. THE SIGNING AND ACCEPTANCE OF THIS SUMMONS BY THE DEFENDANT IS NOT AN ADMISSION OF GUILT OF THE CRIMINAL OFFENSE CHARGED.

(h) Each person receiving a summons under this section shall sign the summons indicating the knowledge of the notice listed in subdivision

(g). The signing of the summons is not an admission of guilt of the criminal offense charged. The signature of each person creates the presumption of knowledge of the notice and a presumption to violate this section if the person should not appear in court or for booking and processing as required by the summons. If the person to receive the summons refuses to sign and accept the summons he or she shall be taken immediately before a magistrate. The magistrate shall order the

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terms and conditions of the defendant's release to include the posting of bail as provided by Tennessee Code Annotated, Title 40, Part 11.

(i) At the initial or any subsequent appearance of a defendant before the court, the judge may order the posting of bail as provided by Tennessee Code Annotated, Title 40, Part 11, as a condition of the continued or further release of the defendant pending the disposition of the summons.

(j) The criminal summons shall be directed and served as provided by Tennessee Code Annotated, Section 40-6-209 and shall be returned as provided by Tennessee Code Annotated, Section 40-6-215 (c).

SECTION 6. Tennessee Code Annotated, Section 40-6-216(a), is amended by adding the words "or summons" between the word "warrant" and "issued".

SECTION 7. Tennessee Code Annotated, Section 40-6-216(b), is amended in the first sentence by adding the words "or summons" between the word "arrest" and the word "to" and by adding the words "or summons" to the end of the sentence.

SECTION 8. This act shall take effect January 1, 2004, the public welfare requiring it.

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